IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1186 of 1998

in

SPECIAL CIVIL APPLICATIONNo 5326 of 1997

with
LPA No.1187/98 in SCA No.8569/97, LPA No.1189/98 in SCA No.7844 of 1987,LPA No.1191/98 in SCA No.7846/97, LPA No.1193/98 in SCA No.7840/97 & LPA No.1194/98 in SCA No.7848/97.

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHABHAI MANILAL KACHHIYA

Versus

AK RAKESH I.A.S. OR HIS SUCESSOR IN OFFICE

Appearance in all matters:

MR N.D.Nanavati, Sr. Counsel for
Mr. BM MANGUKIYA for Appellants

Mr. P.G.Desai GOVERNMENT PLEADER for Respondent No. 1, 2.

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/01/2000

ORAL JUDGEMENT

(Per: Thakkar Actg.C.J)

#. All these appeals arise out of a common judgment and order dated August 14,1998 passed by the learned single Judge in six petitions. The appellants-original petitioners filed the above petitions for an appropriate writ, direction or order quashing and setting aside the decision taken by the Collector, Panchmahals at Godhra, the respondent no.1 herein on June 30,1997 by which the orders passed on January 21,1997 and January 27,1997 were cancelled. They have also prayed for quashing a communication dated June 24,1998 refusing to grant the application of the appellants-petitioners for NA permission under section 65 of the Bombay Land Revenue Code 1875 (hereinafter referred to as 'the Code') in respect of the land of which the petitioners were the owners.

#. Before the learned single Judge several contentions were raised. It was inter alia urged that the orders dated January 21, 1997 and January 27,1997 were passed in favour of the petitioners granting their prayers. In absence of power they could not have been reviewed, and therefore, the action was illegal and without jurisdiction. It was also contended that the action was taken without affording an opportunity of hearing and it was violative of the principles of natural justice and fair play. It was also submitted that the petitioners had acted to their detriment relying upon the order passed in January 1997 and hence it could not have been cancelled as the authority was estopped from revoking the orders.

#. The learned single Judge however considering the facts and circumstances of the case held that the

impugned orders were passed in the light of the fact that a fraud was committed and thus, the orders passed in January 1997, could not be said to be legal , valid and in accordance with law. Hence those orders could have been cancelled by the respondent authority at a subsequent stage. In the opinion of the learned single Judge, the orders passed in January 1997 could not be said to be judicial nor quasi-judicial but administrative in character and said orders could have been reviewed. However, the learned single Judge has proceeded to observe that even if the orders were quasi judicial in character, such action could be taken if the authority was satisfied that the orders were obtained by committing fraud upon the authorities.

#. Regarding natural justice, the learned single Judge observed that ordinarily in such circumstances, show cause notice ought to have been issued and the principles of natural justice ought to have been observed. But in the facts and circumstances of the case it was not necessary inasmuch as the assertion of the petitioners-appellants was that they had not committed fraud . Therefore, according to the learned single Judge, no purpose would be served by affording an opportunity of hearing to the petitioners who were not knowing anything regarding the commission of fraud and non affording of opportunity to such petitioners did not vitiate the action. The petitions were accordingly dismissed.

#. Regarding fixation of market value of the lands, the learned single Judge in para 16 of the order stated thus:

> " The Collector shall accordingly consider the petitioner's applications for permission under section 43 of the Act within three months from the date of receipt of writ of this court or a certified copy of this order, after taking into consideration the letters dated 17.4.1996 of the Deputy Town Planner, Baroda fixing the market value of the lands at Rs. 290/- per sq. mtr."

#. When the matters came up for hearing, notices were issued for admission as well as final hearing pursuant to which the parties have appeared. We have heard Mr. N.D.Nanavati, learned Sr.counsel for Mr. B.M.Mangukia for the appellant-petitioners and Mr. P.G.Desai, learned Government Pleader for the respondent State.

#. Mr. Nanavati reiterated the contentions raised

before the learned single Judge. He mainly, pressed two contentions. Firstly according to him, the orders passed by the authorities on June 30,1997 and consequential orders were violative of the principles of natural justice and fair play and they were required to be quashed and set aside. Secondly he contended that the learned single Judge ought not have issued directions and/or made observations regarding fixation of market price at the rate of Rs.290/- per sq.mtr. as has been done in the impugned judgment.

#. Mr.P.G.Desai, learned Government Pleader on the other hand supported the order passed by the learned single Judge. He submitted that it is settled principle of law that fraud vitiates most solemn undertakings on courts. The learned single Judge has followed various decisions of the Honourable Supreme Court and by doing so no illegality can be said to have been committed by him. Regarding fixation of the price, in his submission, the learned single Judge has not issued any direction to fix the market price at a particular rate. The direction to the Collector was to consider all the relevant factors including the factor that was reflected in a letter to the Collector dated April 17,1996 written by the Deputy Town Planner, Baroda. He submitted that it is not correct to contend that the learned single Judge has fixed the price in exercise of the extra ordinary jurisdiction under Article 226 of the Constitution. The appeals, therefore deserve to be dismissed.

#. In the facts and circumstances of the case in our opinion, the appeals are required to be allowed partly. So far as the fixation of the price is concerned, looking to the order passed by the learned single Judge and particularly the portion extracted hereinabove, it is clear that the Collector will fix the price after considering all relevant factors in accordance with law including the fact that by a letter dated April 17,1996 the Deputy Town Planner, Baroda has fixed the market price. The Collector who is the statutory authority under the law will apply his mind and will come to a conclusion considering all aspects. That part of the order, therefore, in our opinion does not require interference. The only direction which can be issued is that the authority will decide the matter in accordance with law after taking into consideration all relevant factors.

##. Regarding natural justice, however, the learned Senior counsel for the appellants, in our opinion is right in submitting that when the orders passed in

January 1997 were interfered with and set aside the principles of natural justice ought to have been complied with. The learned single Judge has observed that the case of the petitioners was that they had not committed any fraud. In his view therefore, they would not be in a position to throw any light. In our opinion, however, if the case of the petitioners was that they had not committed any fraud, obviously opportunity ought to have been afforded to them. We do not intend to make any observation at this stage on merits. But it is clear to us that the concerned authority will have to pass appropriate order after affording opportunity of hearing to the appellants. If the case of the petitioners was and the learned single Judge believed that according to the petitioners they were not parties to the fraud and they were not aware of such fraud, it was all the more necessary to afford an opportunity of hearing.

##. For the foregoing reasons, the orders passed by the learned single Judge and the orders passed by the respondent no.1 Collector dated June 30, 1997 and June 24,1998 are hereby quashed and set aside. The matter are remanded to the respondent no.1 to pass appropriate orders in accordance with law after affording opportunity to the appellants.

##. We may, however, clarify that we are not expressing any opinion on the merits of the matter and as and when the matters will be heard by the respondent no.1, he will pass appropriate orders in accordance with law. We may keep contentions of all the parties open and as and when the matters will be heard by the respondent no.1, it will be open to the parties to take all contentions available at law.

We further direct that during the pendency of the proceedings before the respondent no.1 the appellants will maintain status quo as operative during the pendency of the proceedings and will not make any change therein.

Copy of this judgment be kept in all other matters. No costs. No orders on CAs.

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